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HB 2671, HD 1 RELATING TO VESTED RIGHTS

Statement for
House Committee on
Judiciary
Public Hearing, 5 March 1980

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HB 2671, HD 1 would amend Chapter 46, Hawaii Revised Statutes to allow counties to enter into agreements concerning future development with the owners of land. This statement on the bill does not reflect an institutional position of the University.

The intent of HB 2671 is to protect the owners of land who have plans for its development from changes in zoning or regulations that would, during the period of planning the development, make the plans unacceptable. The bill points out that considerable investment in development plans may be necessary, and that investment is wasted if zoning and regulatory changes are adopted would make the plans unacceptable. As explicitly recognized in the bill, the agreements it provides for would essentially vest in the owner of land the right to develop it in any manner that is legal and approved by the county at the time an agreement is executed. The bill recognizes that all applicable restriction in force at the time of execution of the agreement must be complied with, including (in HD 1) those relating to "density, design, height, size, and bulk of proposed building, construction standards and specifications, and water utilization requirements. "

There is a certain risk, it is true, that the restrictions on development may change between the time a developer begins to prepare plans for a development and the time he submits the plans for approval. In attempting to reduce the risk, however, HB 2671 appears not only to vest in the owner the right to develop in accordance with the laws and regulations in force at the time the agreement is executed, but to limit the government from imposing additional restrictions later, no matter how appropriate these may be. It may be intended that additional restrictions may be imposed providing the owner is compensated, but this is not spelled out in the bill, nor are any principles applying to the calculation of the amount of compensation. It would seem that the compensation should not exceed any reduction in the value of the development or any increase in the cost of development (including planning cost), whichever is less, that actually resulted from the imposition of the additional restrictions.

The bill would allow a county to establish a time limit to a development agreement. Even if vesting of development rights with the owner of land is appropriate, a time limit should be required, and the bill should, we believe, establish a maximum time limit. Without such a time limit it is possible that the development potential of lands could be forever frozen once such rights are initially vested. There should be an opportunity for effecting changes in land use regulations over the long run. A time limit would permit this to take place, without jeopardizing the short-run expectations of the land-owner/developer.

It is not clear what is intended in including "water utilization requirements" together with those matters such as density, design, construction standards, that are subject to laws and regulations. There may be restrictions on additional water demands, including moratoriums on further development that would increase the demand on limited supplies, and what may be intended is "increases in water demands".

As recognized in the bill, "a balance must be struck between the interests of the individual owner or developer...and the right and duty of the government...to enact...reasonable laws...in the public interest," and the purpose of the Act proposed is to set "a specific point in time at which... [the right of the owner or developer] to develop a property in a certain manner is vested." There is now such a "specific point in time". This is when the owner or developer has all necessary approvals for the development. There may be reason to advance that point in time and shift the risk from the owner or developer to the public. However, more consideration should be given to the change than seems reflected in HB 2671, HD 1.